THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.15347 of 2007

Dated 02-08-2007

Between:

Institute of Public Health & Hygiene,
New Delhi, rep. by its Secretary

…Petitioner

The State of Andhra Pradesh,
Rep. by its Principal Secretary, Health, Medical &
Family Welfare, Hyderabad and others

…Respondents

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Writ Petition No.15347 of 2007

ORDER:

The petitioner challenges the G.O.Ms.No.186, Health, Medical and Family Welfare (J2) Department, dated 15-06-2007, issued by the 1st respondent.

The petitioner is an Institute, imparting education in public health and hygiene. It has headquarters at New Delhi. The courses imparted by it, are recognized by various agencies. So far as the Government of Andhra Pradesh is concerned, it had issued G.O.Ms.No.35, Health, Medical and Family Welfare, dated 30-01-1995, amending the Rules, governing the post of Multi Purpose Health Assistants (Male and Female); issued in G.O.Ms.No.273, dated 24-04-1989 (for short '*the Rules*'). The Diploma Certificate awarded by the petitioner, was treated as qualification under Rule 4 of the Rules.

The Government issued G.O.Ms.No.64, dated 03-02-1996, cancelling the orders in G.O.Ms.No.35, dated 30-01-1995. The same was challenged in W.P.No.3102 of 1996. The said writ petition was disposed of, along with certain other related matters; through common judgment dated 16-04-2001. It was observed that the Rules framed, in exercise of power, conferred under proviso to Article 309 of the Constitution of India, cannot be amended, or set aside, through Executive Orders; and G.O.Ms.No.64 was set aside, leaving it open to the Government to take necessary steps.

In the light of the judgment, rendered by this Court, in W.P.No.3102 of 1996, the Government issued a show cause notice to the petitioner, dated 24-12-2002. Challenging the show cause notice, the petitioner filed W.P.No.15107 of 2002. A Division Bench of this Court declined to interfere with the show cause, and left it open to the petitioner to submit its explanation.

Petitioner claims to have submitted its explanation,

dated 11-11-2003. It is represented that a copy of the explanation was delivered to the office of the 1st respondent, on 16-11-2003, in addition to dispatching a copy, through post.

The 1st respondent took the view that, in spite of receiving the show cause notice, the petitioner did not submit its explanation. Reference is made to the report, submitted by a Committee, constituted for the purpose of examining the entire issue, and ultimately, the courses imparted by the petitioner were de-recognized. It was also pointed out that, amendment to the Rules, if necessary, would be issued, at a later point of time.

On behalf of the respondents, a counter-affidavit is filed. It is stated that the petitioner did not file explanation to the show cause notice. As regards the claim of the petitioner, that a copy of the explanation was delivered to the 1st respondent, on 16-11-2003, it is stated that, it was a Sunday, and the question of the copy being received in the office does not arise. The respondents further contend that no copy was received through post. It is also stated that through the impugned order, the course is de-recognized, and the amendment to the Rules, if needed, would be considered, at a later point of time.

Heard Sri S. Ramchander Rao, learned Senior Counsel appearing for the petitioner, and learned Government Pleader for Medical and Health.

Though contentions have been advanced, touching on merits and procedural aspects, this Court is of the view, that the controversy is in a very limited compass. Soon after it received the show cause notice, the petitioner had approached this Court by filing a writ petition, raising several contentions. The writ petition was disposed of, leaving it open to the petitioner to submit explanation, by raising all its

contentions. While the petitioner asserts that the explanation was submitted, both in person and through post, there is a serious dispute, as regards the same. A copy of the explanation is enclosed, in the material papers.

The show cause notice, as observed earlier, was issued on 24-12-2002. The writ petition, filed by the petitioner, was disposed of, on 11-09-2003. The petitioner claims to have submitted its explanation in November 2003. Assuming that there was lapse on the part of the petitioner, things would have been different, had the 1st respondent passed the final order, shortly thereafter, as directed by this Court. The 1st respondent took nearly 3 ½ years, to pass the orders. We are not on the reasons, that warranted the delay. What becomes material is, that the 1st respondent ought to have heard from the petitioner, as to whether any explanation was submitted, or, at least, ought to have given an opportunity, in view of the enormous delay, that had occurred, in the matter of passing the final order. The observation of the Division Bench, that the petitioner shall also be extended personal hearing, cannot be ignored. Therefore, this Court is of the view that the explanation, submitted by the petitioner, deserves to be considered.

On this short ground, the writ petition is allowed, and the impugned order is set aside. It is, however, directed that the 1st respondent shall pass fresh orders, within a period of four weeks from today, duly taking into account, the explanation, submitted by the petitioner.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.02-08-2007.

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